

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Farrell Goldman	Team: Team # 4	CCRB Case #: 200303702	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/20/2003 5:00 PM	Location of Incident: § 87(2)(b) [REDACTED]	Precinct: 44	18 Mo. SOL 11/20/2004	EO SOL 11/20/2004	
Date/Time CV Reported Tue, 05/20/2003 9:06 PM	CV Reported At: Other NYPD unit	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 05/21/2003 9:06 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Osvaldo Nunez	03579	918086	044 PCT
2. POM Michael Greene	21760	897604	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Greene	Abuse: Police Officer Michael Greene threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
B.SGT Osvaldo Nunez	Abuse: Sergeant Osvaldo Nunez threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]

Synopsis

On 20 May 2003, PO Michael Greene and Sgt. Osvaldo Nunez, both from the 44th precinct, threatened to arrest the complainant § 87(2)(b) if she did not leave an apartment located at § 87(2)(b). § 87(2)(b), § 87(2)(g)

Summary of Complaint

On 20 May 2003, Lt. Daniel Albano from the NYPD's Legal Bureau, called the CCRB's call processing system to report that the complainant, § 87(2)(b) accused PO Michael Greene and Sgt. Osvaldo Nunez, both from the 44th precinct of threatening to arrest her during a domestic dispute. (Encl. 7A-B) On 21 May 2003, the undersigned called § 87(2)(b) (encl. 6A) to get further details of her complaint. After finding out more specifics of the case, the undersigned determined that the case was eligible for the agency's mediation program. After the program was described to § 87(2)(b) she agreed to participate. However, several days later, she left a message on the voicemail box of Mediation Associate Jessica DeCarolis, stating that she no longer wished to participate in the mediation process § 87(2)(b)

§ 87(2)(b) a § 87(2)(b) for § 87(2)(b), was officially interviewed at the CCRB on 20 June 2003. (Encl. 8A-D) § 87(2)(b) stated that since August 2002, she has been illegally subletting an apartment located at § 87(2)(b) to her co-worker, § 87(2)(b) has been living in the 3-bedroom apartment with her 2 sons and at the time of the incident, her sister § 87(2)(b) was visiting. § 87(2)(b) has not been living in the apartment, and although she comes over to retrieve items she kept in a spare bedroom, she has not been sleeping there. Recently in May 2003, she signed over the lease of the apartment where § 87(2)(b) lives to her son, § 87(2)(b). § 87(2)(b) was given copies of the keys, and § 87(2)(b) was made aware of the transfer.

On 20 May 2003, in the late afternoon, § 87(2)(b) received a call at work from her son, telling her that he could not get into the apartment- someone inside had put a chain on the front door, and was not opening the door for him. Deciding to investigate, § 87(2)(b) left her job and went to the apartment.

When she arrived at the apartment, she tried to get in using her key, and the chain was still on the door. § 87(2)(b) wished to break the chain, but § 87(2)(b) decided to call 911 instead. Two unknown male officers soon showed up (one was black, one was Latino), and after identifying themselves as police officers, § 87(2)(b) opened the door for them.

The officers, § 87(2)(b) and § 87(2)(b) entered the apartment, where an argument ensued. § 87(2)(b) told the officers that § 87(2)(b) was illegally subletting the apartment to her sister, and the black officer asked § 87(2)(b) if the apartment belonged to her, asking for documentation pertaining to the ownership of the apartment. § 87(2)(b) was able to furnish identification pertaining to the apartment, and the officers told him he could stay. This did not sit well with § 87(2)(b) who continued to complain as the Latino officer told her, "Look, I don't know what's going on in here, but he has to be let into the apartment." § 87(2)(b) kept yelling that she did not know § 87(2)(b) and therefore, did not wish to be in the apartment with him. The Latino officer attempted to solve this problem by telling § 87(2)(b) "This is § 87(2)(b) and then told § 87(2)(b) "Hey § 87(2)(b) this is § 87(2)(b) ," and then to both parties, "Now you know each other!" § 87(2)(b) went to one of the bedrooms and slammed the door.

The officers began to depart, but before leaving, told § 87(2)(b) "You know, this really isn't a police matter. This is a court matter." § 87(2)(b) acknowledged this and thanked the officer for his help. After they left, § 87(2)(b) went into another apartment in the complex where his girlfriend lived, and § 87(2)(b) went to her boyfriend's apartment (where she lives) located at § 87(2)(b). She wanted her boyfriend, § 87(2)(b) to remove the chain to the front door, so that she and her son would no longer be locked out, and also to change the locks in the back bedrooms. By the time they arrived back at the § 87(2)(b)

§ 87(2)(b) apartment, § 87(2)(b) had arrived home. § 87(2)(b) instructed § 87(2)(b) to remove the chain, to the protests of § 87(2)(b) and § 87(2)(b). § 87(2)(b) hedged, but § 87(2)(b) ordered him to remove the chain, although § 87(2)(b) and § 87(2)(b) insisted he could not change the locks. After he was done, she told him to change the locks to the back bedrooms, at which point § 87(2)(b) called 911, requesting police assistance.

Shortly thereafter a locksmith showed up § 87(2)(b) had called him in § 87(2)(b)'s absence) and attempted to change the front door locks. § 87(2)(b) told the locksmith he could not change the locks, as § 87(2)(b) told him he could. The locksmith finally said to § 87(2)(b) "I'm going to change the locks anyway," to which § 87(2)(b) responded that she would sue him if he did.

§ 87(2)(b) went back to the bedrooms to check on the progress § 87(2)(b) was making and returned to the main living room area when she heard voices. There were two different officers standing in the room-identified as Sgt. Nunez and PO Greene. "Leave this apartment right away or else we're going to arrest you!" PO Greene announced. As § 87(2)(b) tried to explain the situation to the officer, he cut her off, telling her, "I don't care, there's only side to this story as far as I'm concerned. You will be arrested." Sgt. Nunez then told § 87(2)(b) "She § 87(2)(b) can change the locks on the door, do you live here?" § 87(2)(b) conceded that she did not, but told Sgt. Nunez that her son did. "You can be arrested then. Where's your son?" When § 87(2)(b) told him her son was not available, Sgt. Nunez told her, "You are to leave this apartment then, and you are to leave this apartment right now!" Shaken, § 87(2)(b) fetched § 87(2)(b) from the back bedroom (he was not even aware that police were in the apartment) and the two left. The officers told them, "Thank you," as they departed. Meanwhile, the locksmith had begun to change the locks as soon as Sgt. Nunez told everyone the locks could be changed.

Results of Investigation

Witness Interviews

§ 87(2)(b)

§ 87(2)(b) was interviewed at her place of work on 25 July 2003. (Encl. 9A-B) § 87(2)(b) is a § 87(2)(b) for § 87(2)(b), and is currently living in the apartment at § 87(2)(b). § 87(2)(b), § 87(2)(b), § 87(2)(g) stated that § 87(2)(b) and her son were not living at the apartment at the time of the incident. § 87(2)(b) called 911 several times during the incident, and when PO Greene and Sgt. Nunez arrived for the first time § 87(2)(b) was not present for this), they informed § 87(2)(b) that she could not be evicted without a lawful court order since she was paying rent. When they came back the second time, they explained the situation to § 87(2)(b) and told her she could be arrested if she unlawfully evicted her tenant, also telling her that § 87(2)(b) could change the locks § 87(2)(b) had called the locksmith) as she was the one who was living in the apartment. The officers were "professional" in their dealings with § 87(2)(b) and left after she departed the scene.

§ 87(2)(b), § 87(2)(b), § 87(2)(b) and the locksmith were not interviewed § 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Police Officer Interviews

PO Michael Greene

PO Michael Greene was interviewed on 13 August 2003. (Encl. 10A-D) PO Greene is assigned to the 44th precinct, and on the date of the incident, was partnered with Sgt. Nunez. PO Greene believed that the officers responded twice to the incident location, but could not remember specifics of the first time, except that the officers interacted with just § 87(2)(b). They were called back a second time to respond to § 87(2)(b) harassing § 87(2)(b).

§ 87(2)(b) had told the officers that she had sublet her apartment from § 87(2)(b) who was the legal tenant, and that she § 87(2)(b) had been living in the apartment for approximately 8 months and now § 87(2)(b) was trying to get § 87(2)(b) to vacate the apartment. PO Greene understood that someone could not simply be evicted from an apartment without a court order, after having lived there for more than 30 days. § 87(2)(b) wished to evict § 87(2)(b) and then change the locks on the apartment afterwards. § 87(2)(b) told the officers that although § 87(2)(b) kept some items stored in a back bedroom, she was not actively living in the apartment. Through speaking with § 87(2)(b) it was revealed to PO Greene that § 87(2)(b) was the original lease holder of the apartment, and § 87(2)(b) was paying a reduced rate on the apartment due to it being subsidized by the federal government. § 87(2)(b) had moved out of the apartment, moved in with her boyfriend, and subleased the entire apartment to § 87(2)(b) turning a profit.

When the officers spoke with § 87(2)(b) she told them that she wished to evict § 87(2)(b) and change the locks on the apartment door, without citing a specific reason why she wanted to evict § 87(2)(b). Realizing that § 87(2)(b) wanted to evict § 87(2)(b) unlawfully, PO Greene explained the provisions of the Patrol Guide, which states that if a landlord changes the locks on a tenant without providing a key to the new locks, or access to the apartment, this constitutes an unlawful eviction. He told § 87(2)(b) that the matter would have to be settled in court, and that if § 87(2)(b) unlawfully evicted § 87(2)(b) could be subject to arrest.

§ 87(2)(b) was not happy with PO Greene's statement calling the officers, "unfair." PO Greene told her that he could not comment on the law, but could tell her what the law was, so she could know what she could and could not do. § 87(2)(b) was "agitated and contentious" during the lecture, and was upset that the officers would not support her position. At some point, a locksmith was on the scene, at the request of § 87(2)(b). PO Greene stated that § 87(2)(b) was entitled to change the locks because she was living in the apartment.

§ 87(2)(b) ultimately left the apartment at the officers' request, after being explained the tenant laws a few times. PO Greene never directly threatened § 87(2)(b) with arrest, but after apprising her of the unlawful eviction code, told her she could be arrested under the provisions of the Patrol Guide. The officers left the scene, leaving § 87(2)(b) in the apartment.

Sgt. Osvaldo Nunez

During his 13 August 2003 CCRB interview (encl. 11A-E), Sgt. Nunez stated that after the officers responded to the first call and apprised § 87(2)(b) of her rights as a tenant, they received a second message, requesting police assistance to the apartment. § 87(2)(b) was at the scene this time, along with a locksmith called by § 87(2)(b). After hearing § 87(2)(b)'s side of the story, where she told them her name was on the lease of the apartment, and she wanted to evict § 87(2)(b). Sgt. Nunez told her § 87(2)(b) it was not that simple. Sgt. Nunez explained that the matter had to be handled in civil court, and that § 87(2)(b) could not simply change the locks on her tenant- that such action would constitute an unlawful eviction.

The locksmith seemed "nervous" and stood nearby. Sgt. Nunez advised the locksmith that he could continue to change the locks, he was within his legal rights to do so, since he was working for the tenant. The locksmith started to change the front door locks, while § 87(2)(b) told the officers that she planned to change the locks back after he had finished. Sgt. Nunez then told her, "You can't change the lock again unless you provide your tenant with a key." § 87(2)(b) stated she would not do that, and would change the lock again. Sgt. Nunez again told her that she could not do that, and if she did so without presenting the tenant with the key, she § 87(2)(b) would be arrested for unlawful eviction. Sgt. Nunez also

told § 87(2)(b) that she could not come into the apartment any longer, because she sublet the apartment to § 87(2)(b) and, for legal purposes, she was now considered a landlord. § 87(2)(b) was not happy that the law was geared to protect tenants, and claimed that her son still lived in a bedroom in the apartment. The officers checked the room where § 87(2)(b)'s son lived and found that it was used as a storage room, and was sufficient for sleeping conditions. Sgt. Nunez explained that if § 87(2)(b) wanted § 87(2)(b) out permanently, they would have to go to court, and that if § 87(2)(b) continued to frequent the apartment when § 87(2)(b) was not there, § 87(2)(b) could be arrested on trespassing charges. The officers requested that § 87(2)(b) leave, and waited for her to leave because they did not wish to be called back to the apartment a third time.

Sgt. Nunez stated that it did not matter that the apartment was being illegally sublet. The eviction is what the officers were entitled to take action on, but the legal ownership of the apartment is something for the courts to decide.

Sgt. Nunez had never been to the apartment before, but stated that a radio run like this is very frequent, and he considers a situation like this "routine," because he has handled situations like this in the past.

Police Documents

§ 87(2)(b) made 911 calls (encl. 12A-C) on 20 May 2003. § 87(2)(b) called 911 four times from the apartment at § 87(2)(b). She is heard arguing with someone in the background and tells the operator during the calls that § 87(2)(b) is trying to change the locks in the apartment. During the fourth call, she tells the operator that § 87(2)(b) came back to change the locks and was told by police to call 911 again if she needed further assistance.

§ 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Other Documents

There are other numerous documents (encl. 14A-J) contained within the case file which deal with ownership of the apartment, rent receipts made out to § 87(2)(b) and management companies correspondence to § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b). The documents indicate that the apartment is in dispute and go to prove that the apartment was in fact occupied by § 87(2)(b) while the lease was not in her name.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Conclusions and Recommendations

Here are the undisputed facts of the case: § 87(2)(b) her son, and § 87(2)(b) are engaged in a heated dispute over rights to an apartment located at § 87(2)(b). There was a domestic dispute on 20 May 2003, during which time the police (2 different sets) responded to the location. § 87(2)(b) wished to remove a lock to the front door, and change the back bedroom locks, and the second set of officers, PO Greene and Sgt. Nunez, told her (either directly as Sgt. Nunez contends, or indirectly as PO Greene attested to) that if she did, she could be arrested for violating the law.

Patrol Guide Procedure 214-12 (encl. 2A-B) deals with unlawful evictions. It mentions, in part, that the procedure is designed to “discourage, through imposition of substantial criminal and civil penalties, unlawful evictions to occupants.” The procedure further states, “the law makes it unlawful for any person to evict or to attempt to evict an occupant... (subsection f) and/or changing the lock on such entrance door without supplying the occupant with a key.” The procedure goes on to state, “Unless a Warrant of Eviction or Government Order to Vacate has been executed the protective provisions of this law applying the following circumstances: (subsection b) When an individual has lawfully occupied a dwelling unit for thirty or more consecutive days.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) told § 87(2)(b) the undersigned that she wanted the officers punished for their behavior during the incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: